

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

GREGORY D KONSIONOWSKI

v.

JURY TRIAL MINUTES

PHILLIP J SIKORSKI

Case No. 19-cv-0596-bhl

HONORABLE BRETT H. LUDWIG presiding

Dates of Trial: 10/3/22 – 10/6/22

Deputy Clerk: Julie D

Court Reporter: Tom Malkiewicz

Appearances:

GREGORY KONSIONOWSKI in person and by: James End and Alexa Caitlyn Bradley

PHILLIP SIKORSKI in person and by: Jasmyne Baynard and Kiley Beth Zellner

MONDAY, October 3, 2022

9:12 AM Court in session. Case called. Appearances made.

Court rules on pending motions in limine: Sukup deposition designation. Defendant is overruled. The designated opinion is relevant. Excludes plaintiffs request to read in paramedic's request to admit. Court addresses request to omit parts of video.

Court turns to *voir dire*. 26 jurors have reported; 13 will be seated in the jury box and the remaining jurors will be seated in the gallery. Court will instruct full venire to listen closely to all questions. If a juror from the box is stricken for cause, a replacement will be called from the gallery. Plaintiff will have 3 strikes and defendants will share 3 strikes as discussed at the pretrial.

Court addresses witness scheduling. Attorney End anticipates reading in deposition of Joanna Sukup, calling Dane Helland, Randy Abbrederis, Dr. Jeffrey Kutcher and Phillip Sikorski today; then, Fr. Charles Schramm, Steven Kon and Gregory Konsionowski tomorrow morning. Defendant plans to call Sheryl Dolezal, Psy. D.

9:40 AM Court will circulate a clean set of proposed jury instructions by the end of the day. Will review with counsel tomorrow along with verdict form.

9:45 AM Defense asks if OWI motion in limine ruling reconsidered. Ruling from pretrial conf stands.

9:53 AM Parties stipulate witnesses will be sequestered prior to testifying.

9:55 AM Recess (CSO Eder to Rm 190)

Court in session. (*Jury Profile List provided to the parties.*)

10:00 AM Jury panel brought to courtroom.

Court makes introductory remarks; 26 prospective jurors sworn.

Voir dire commences.

10:30 AM Court excuses Juror #15.

Voir dire to all resumes.

10:40 AM Court has sidebar with counsel. *Voir dire* to all resumes.

10:44 AM Court excuses Juror#16.
 10:46 AM Court excuses Juror #20
 10:53 AM Court has sidebar with counsel. *Voir dire* to all resumes.
 11:00 AM Parties do not have any follow-up questions for the jury.
 Parties exercise peremptory challenges.
 11:06 AM **Jurors 1, 4, 6, 8, 11, 13 and 18 are selected to serve.**
 Court excuses balance of jury pool.
 Clerk administers oath to jury.
 Court addresses housekeeping matters.
 11:10 AM Jury out.
 11:12 AM Recess
 11:31 AM Court in session.
 11:33 AM Jury in.
 Court gives preliminary instructions to jury.
 11:48 AM Plaintiff's opening by Mr. End.
 12:00 PM Defendant's opening by Ms. Zellner.
 12:13 PM Jury out.
 12:15 PM Lunch
 1:17 PM Court in session.
 Court provides jury instruction re reading in deposition.
 1:20 PM Jury in. Judge reads jury instruction.

Plaintiff calls Joanna Sukup, EMT/Paramedic – Menomonee Falls Fire Dept (by Deposition read in)

1:40 PM Attorney End and Attorney Bradley read in deposition.
 1:29 PM Exhibit 18 is discussed.
 1:37 PM Exhibit 20 is discussed.
 1:42 PM Exhibit 21 is discussed.
 1:45 PM Exhibit 18 is discussed.
 1:45 PM Exhibit 22 is discussed.
 1:51 PM Witness is excused.

Plaintiff calls Officer Dane Helland, retired Menomonee Falls Police Officer

Witness sworn.
 1:52 PM Direct examination by Mr. End.
 2:00 PM Exhibit 1 is discussed.
 2: 14 PM Exhibit 1 is discussed.
 2:17 PM Exhibit 3 is discussed.
 2:25 PM Exhibit 2 is discussed.
 2:37 PM Exhibit 16 is discussed.
 2:44 PM Exhibit 2 is discussed.
 3:01 PM Jury out.
 Discussion re questioning of witnesses.
 3:03 PM Recess
 3:23 PM Jury in.
 3:23 PM Direct examination by Mr. End continues.
 3:36 PM Exhibit 4 is discussed.
 3:38 PM Cross by Ms. Zellner.
 3:46 PM View and discuss Exhibit 2.
 3:59 PM Redirect
 4:06 PM Follow up
 4:06 PM Witness is excused.

4:07 PM Jury out.
4:16 PM Jury In.

Plaintiff calls Jeffrey Kutcher, M.D., F.A.A.N. (via Zoom)

Witness sworn.

4:17 PM Direct examination by Mr. End.
4:33 PM Break
4:36 PM Back on record. Direct examination continues.
4:48 PM Cross by Ms. Zellner
5:03 PM Redirect by Mr. End.
5:05 PM Court instructs jury to return by 9:00 a.m.
Jury out.
5:12 PM Court is adjourned for the day.

TUESDAY, October 4, 2022

9:02 AM Case called. Appearances remain the same.
Discussion regarding witness scheduling.
Draft jury instructions and verdict distributed to parties for review.
9:08 AM Discuss redactions to exhibits 1, 5 and 11.
9:10 AM Jury in.

Plaintiff calls Randy Abbrederis

Witness sworn.

9:12 AM Direct examination by Ms. Bradley.
9:20 AM Defendant requests sidebar
9:22 AM Direct examination continues.
9:38 AM Cross examination by Ms. Zellner.
10:01 AM Redirect.
10:06 AM Witness is excused.

Plaintiff calls Fr. Charles Schramm

Witness sworn.

10:08 AM Direct examination by Ms. Bradley.
10:18 AM Cross examination by Ms. Baynard.
10:28 AM Witness is excused.
10:30 AM Jury out.
10:31 AM Recess
10:47 AM Court in session. Court and parties discuss exhibit redactions.
10:53 AM Recess for parties to discuss exhibit redaction.
11:07 AM Court in session. Court and parties discuss exhibit redactions.
11:24 AM Jury in.

Plaintiff calls Steven Kon

Witness is sworn.

11:25 AM Examination by Ms. Bradley.
11:51 AM Cross examination by Ms. Baynard.
12:04 PM Witness is excused.

12:05 PM Jury out.
12:06 PM Recess
1:09 PM Jury in.

Plaintiff calls Phillip Sikorski

Witness is sworn.

1:10 PM Examination by Mr. End.
1:14 PM Sidebar with counsel
1:16 PM Direct continues
1:19 PM Exhibit 9 is discussed.
1:26 PM Exhibit 5 is discussed.
1:29 PM Exhibit 11 is discussed.
1:39 PM Exhibit 8 is discussed.
1:40 PM Exhibit 2 is discussed.
2:54 PM Jury out. Recess
3:14 PM Court in session
3:16 PM Jury in.
3:17 PM Examination by Mr. End continues, exhibit 2 dash cam video played at various points.
3:45 PM Exhibit 23 is discussed.
4:13 PM Exhibit 45 is discussed.
4:14 PM Cross examination by Ms. Zellner.
4:15 PM Exhibit 9 is discussed.
4:18 PM Exhibit 16 is discussed.
4:56 PM Redirect.
5:01 PM Follow up
5:03 PM Exhibit 42 is discussed.
5:04 PM Witness is excused.
5:05 PM Jury out.
5:08 PM Recess

WEDNESDAY, October 5, 2022

8:58 AM Case called. Appearances remain the same.
Discussion regarding Jury Instructions and Special Verdict.
9:09 AM Jury in.

Plaintiff calls Gregory Konsionowski

Witness is sworn.

9:10 AM Examination by Mr. End.
9:38 AM Exhibit 3 is viewed and discussed.
9:45 AM Exhibit 4 is discussed.
9:46 AM Exhibit 41 is discussed.
10:03 AM Cross examination by Ms. Zellner.
10:14 AM Exhibit 41 is discussed.
10:40 AM Jury Out. Recess.
11:03 AM Court in session. Discuss qualified immunity issues.
11:11 AM Jury In.
11:12 AM Cross examination continued by Ms. Zellner.
11:14 AM Redirect by Mr. End.
11:15 AM Witness is excused.

11:16 AM Plaintiff rests.
11:18 AM Jury Out.
11:18 AM Defendant makes motion. Court denies motion.
11:21 AM Def object to punitive damage instruction/question. Judge denies.

11:22 AM Recess.
 12:53 PM Court in Session. Court addresses decision on qualified immunity issue with arguments from parties.
 1:12 PM Jury in.
 1:38 PM Court completes instructing the jury with sidebar with counsel at 1:32 PM

 1:38 PM Plaintiff closing by Mr. End.
 2:06 PM Defendant closing by Ms. Baynard.
 2:34 PM Rebuttal.

 2:38 PM CSO Eder is sworn.
 2:40 PM Jury out to commence deliberations.
 2:44 PM Court in recess.
 4:44 PM Note from jury. Court in session.
 5:00 PM Jury in. Decide to come back tomorrow to deliberate.
 5:03 PM Court instructs jury to return by 9:00 a.m.
 5:04 PM Jury out.
 5:05 PM Court is adjourned for the day.

TUESDAY, October 4, 2022

8:48 AM Case called. Appearances remain the same.
 Parties and court discuss videos for jury.
 9:00 AM Jury in. Court explains procedure for viewing video. Deliberation will continue.
 9:01 AM Jury out. Court is in recess.
 11:37 AM Note from jury. Court in session.
 11:45 AM Jury in. Discuss jury requests. Given copies of exhibit 5 and 11.
 11:48 AM Jury out. Court is in recess.
 3:10 PM Note from jury. Court in session. Jury can't come to agreement. Court gives the parties their options and will give them time to discuss with their clients.
 3:13 PM Recess.
 3:35 PM Court in session. Parties stipulate to non-unanimous verdict. 5 of 7 jurors must agree.
 3:46 PM Recess.
 3:55 PM Court in session. Parties review new draft verdict form and jury instruction.
 3:57 PM Jury in. Court addresses jury's note. Gives additional jury instruction.
 3:59 PM Jury out.
 4:01 PM Court in recess.
 4:25 PM Jury has reached a verdict. Parties notified.
 4:28 PM Court is in session. All parties present.
 4:29 PM Jury in. Foreperson confirms verdict.
 4:30 PM Clerk reads verdict.
 4:32 PM Court polls the jury.
 4:34 PM Jury is excused.
 4:35 PM Court is adjourned.